IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6580 of 2002

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AGRICULTURAL UNIVERSITY

Versus

GUMANSINGH UMEDSINGH

Appearance:

MR DG CHAUHAN for Petitioner

MR TR MISHRA for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 17/07/2004

ORAL JUDGEMENT

1.0 The petitioner has challenged the judgement and award dated 4.11.2000 passed by the Presiding Officer, Labour Court, Palanpur, in Reference (LCP) No.219/96 whereby the Labour Court directed the petitioner University to reinstate the respondent workman on his original post with continuity of service with 50%

backwages.

2.0 The respondent was engaged on 1.6.1983 as daily rated labour and he was given work of Chowkidar in the Agricultural College Hostel. According to the petitioner, the respondent workman, without informing the concerned authority, himself left the work from 16.8.1989. Thereafter the respondent workman never reported for duty.

2.1 After about a year, the respondent workman raised a dispute which was numbered as Reference (LCP) No.306/1991 before the Labour Court, Palanpur claiming reinstatement in service with full backwages. The petitioner University filed its written statement at Exh.7. During the pendency of the Reference by letters dated 24.2.1992, 10.3.1992, 1.6.1992 and 20.6.1992 the respondent workman was asked to report for duty as Chokidar. However, the respondent workman did not report for duty. Ultimately the Labour Court by judgement and award dated 4.11.2000 directed the petitioner University to reinstate the respondent workman on his original post with continuity of service and with 50% backwages from 16.8.1989 to 23.12.1992. It is against the said decision the petitioner has preferred the present petition.

3.0 Learned counsel for the petitioner submitted that the petitioner has not terminated the services of the respondent workman and he himself had left the work on 16.8.1989. He, therefore, submitted that the reference itself was incompetent and the Labour Court ought not to have granted reinstatement with continuity of service and with 50% backwages. Mr. Chauhan submitted that the evidence on record clearly establishes that the respondent workman left the service on his own. He stated that the petitioner has repeatedly requested the respondent workman to report for work, but he has not turned up. Mr. Chauhan submitted that the respondent workman in his deposition admitted that he was gainfully employed and was earning more wages than what he was getting in the petitioner University and therefore the Labour Court ought not to have granted backwages.

4.0 Learned counsel for the respondent workman submitted that the petitioner University has without any notice or notice pay orally terminated the services of the respondent. According to him even after the termination he had approached the petitioner University for work, but they have refused to take him.

5.0 Mr. Chauhan for the petitioner has relied upon a

decision of the Supreme Court in the case of M/s Haryana State F.C.C. W. Store Ltd. Vs. Ram Niwas, reported in AIR 2002 SC 2495. In the said decision the Supreme Court has held as under:

"Since there exists a contract of service with the terms and conditions as noted earlier the position is inescapable that the case of disengagement/termination of the workman concerned did not amount to retrenchment. In particular facts and circumstances of the case the Labour Court rightly came to the conclusion that the workmen were entitled to no relief in the case. The High Court was clearly in error in interfering with the Award passed by the Labour Court. Accordingly, the appeals are allowed. The judgements of the High Court in CWP No.9471/99 and CWP No.9472/99 dated 22.9.2000 allowing the writ petitions filed by the respondent workmen are set aside and the Award of the Tribunal is restored. There will, however, be no order for costs."

5.1 Mr. Chauhan for the petitioner has relied upon a decision of the Bombay High Court in the case of Raju Sankar Poojary Vs. Chembur Warehouse Company and Another, reported in 2003 LLR 1150. In the said judgement it is held as under:

"6. ...An employee who has been repeatedly offered opportunity to join the services by the employer, when fails to take benefit of such an offer, cannot hereafter insist for the relief of reinstatement or for back wages. It would amount to ordering grant of bonanza for the mischief played by the workman himself. Being so, once the materials on record clearly disclose that in spite of repeated offers by the respondent company, the petitioner had failed to report to his duty, there was no fault on the part of the Labour Court in refusing the relief of back wages. Once it had been the consistent case of the respondent company and having been established with the materials on record that there was no termination of services but it was a case of abandonment of services, by the employee, without any justifiable reason, the question of ordering reinstatement also cannot arise. Viewed from this angle, therefore, there is no case for interference in the impugned order by this court in its writ jurisdiction."

5.2 Mr. Chauhan has also relied upon a decision of the Supreme Court in the case of Bombay Steel Rolling Mills Vs. K.R. Steel Mills Labour Union, reported in 1964 II LLJ 120. In that decision it was held that the settlement of 4th May 1957 entitled the workmen to reinstatement on their final acquittal in the criminal cases. Even apart from such settlement there would be a good case for their claim of reinstatement as soon as they had been acquitted. But if after such acquittal the workmen preferred to remain away and did not ask for work, it is neither fair nor reasonable to ask the management to comply with the demand for reinstatement made months and months after such acquittal. During this long period the employer has naturally employed new workmen and in the special circusmtances of this case that fact cannot be altogether ignored. The reinstatement ordered by the tribunal cannot therefore be sustained.

5.3 Mr. Chauhan submitted that in the present case the workman has left on his own and therefore in view of the above decisions the order of the Labour Court is illegal and bad in law.

6.0 Mr. U.T. Mishra, learned counsel for the respondent workman has relied upon a decision of the Supreme Court int he case of Delhi Cloth & General Mills Ltd. Vs.Shambhu Nath Mukherjee and others, reported in 1978 I LLJ page 1. In that decision the Supreme Court held as under:

> "Striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of S.2(oo) of the Act. There is nothing to show that the provisions of S.25F(a) and (b) were complied with by the management in this case. The provisions of S.25F(a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent is invalid."

However, in the present case the workman has left on his own whereas in the aforesaid case the workman did not report for duty because he was expecting a reply to his letter. Therefore the aforesaid decision would not be applicable to the facts of the present case.

6.1 Mr. Mishra has relied upon a decision of this Court in the case of Surat Mahila Nagrik Sahakari Bank

Ltd. Surat Vs. Mamtaben Mahendrabhai Joshi, reported in 2001(3) LLN 444. In that decision it is held as under:

"Termination of service of a casual workman on daily-wages will not fall within the exception contained in Sub-cl.(b) of S.2(oo) of the Industrial Disputes Act because contract of employment is referable to the contract other than engagement of casual workers on daily-wages. Non-renewal of the contract-employment presupposes an existing contract of employment which is not renewed. The position, however, would be different when such a contract is in reality a camouflage for a more sustaining nature of arrangement but a mode of daily wager is obtained so as to avoid the rigours of the Act. The clause does not contemplate to cover a contract such as of a daily wager and is rather intended to cover more general clause of contract where a regular contract of employment is entered into and the termination of service is an act of non-renewal of contract".

".. The employer cannot steal away emplloyee's umbrella provided by Ss2(oo) and 25B read with S.25F of the Act by serving an employee the last letter of his appointment or renewal with the stipulation of termination of service under the contract so as to bring the termination within the excepted category and to snatch it out from the purview of retrenchment. If the appointment for fixed period is established, in such case, the employer has misused the power and by appointing for a fixed period was a colourable exercise of power, then S.2oo)(bb) is not applicable. If the appointment letter was a mala fide or this was done precisely to avoid the benefit to workman under the Labour Laws then S.2(oo)(bb) is not applicable."

7.0 From the facts of the case it becomes abundantly clear that the petitioner has not terminated the services of the respondent workman, but the respondent workman himself had left the work on his own. Therefore, the aforesaid decisions cited by Mr. Mishra would not be applicable to the facts of the present case. The record shows that the during the pendency of the reference also the respondent was asked to report for duty, but he did not do so. If the workman preferred to remain away and did not ask for work, it would not be proper to ask the

management to comply with the demand of the workman. Moreover, the respondent workman in his deposition admitted that he was gainfully employed and was earning more wages than what he was getting in the petitioner University. Perhaps it is for this reason that the respondent workman did not report for duty even though he was offered the job. The case is squarely covered by the jdugement of the Apex Court in the case of Bombay Steel Rolling Mills (supra).

8.0 In view of the above facts and circumstances, the judgement and award requires to be set aside. Accordingly the judgement and award dated 4.11.2000 passed by the Labour Court, Palanpur, in Reference (LCP) No.219/96 is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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